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Supreme Court, U.S.
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In The OFFICE OF THE CLERK
Supreme Court of the United States

ALLEN LEON SAMMONS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred in affirming the sentence imposed by the district court and not finding the district court committed procedural error in failing to consider the facts and circumstances of the offense(s); failed to consider the history and characteristics of the Petitioner; failed to consider alternative sentence(s); and failed to adequately explain the reasons for a variance at sentencing.

Whether the United States Court of Appeals for the Fourth Circuit erred in affirming the sentences imposed by the district court and not finding the district court abused its' discretion in varying above the guideline range granting the request the request for an upward variance.

PARTIES TO THE PROCEEDINGS

Petitioner

Allen Leon Sammons

Respondent

United States of America

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Petitioner Allen Leon Sammons ("Sammons") respectfully request that this Court issue a writ of certiorari to review the decision entered in this case by the United States Court of Appeals for the Court Circuit.

OPINIONS AND ORDERS BELOW

The unpublished per curiam opinion of the United States Court of Appeals for the Fourth Circuit affirming the decision of the United States District Court for the Western District of Virginia, *United States of America v. Allen Leon Sammons,* No. 09-4936 (January 7, 2011), which is contained in the Supreme Court Appendix at A-1. (Hereinafter referred to as Appendix ____).

The Judgement Order of the United States Court of Appeals for the Fourth Circuit, *United States of America v. Allen Leon Sammons,* No. 09-4936 (January 7, 2011), which is contained in the Appendix at A-6.

The Judgement Order of the United States District Court for the Western District of Virginia, *United States of America v. Allen Leon Sammons,* No. 09-4936 (October 1, 2009), which is contained in the Appendix at A-7.

The Transcript excerpt setting forth the oral ruling of the District Court Judge in sentencing Sammons, *United States of America v. Allen Leon Sammons,* No. 09-4936 (September 30, 2009), which is contained in the Appendix A-18.

The Statement of Reasons of the United States District Court for the Western District of Virginia, *United States of America v. Allen Leon Sammons,* No. 09-4936 (October 1, 2009 from Date of Imposition of Judgement on September 30, 2009), which is contained in sealed addendum in the Appendix at A-22.

JURISDICTION

This Court has jurisdiction to review the order of the court of appeals on a writ of certiorari pursuant to 28 U.S.C. § 1254(1). The judgement of the United States Court of Appeals for the Fourth Circuit was entered on January 7, 2011. This petition for writ of certiorari is timely filed within 90 days of that date. Sup. Ct. R. 13.3. The District Court had jurisdiction pursuant to 18 U.S.C. 3231 and 18 U.S.C. 3232. as to an action arising under the Eight Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eight Amendment to the United States Constitution provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

STATEMENT OF THE CASE

In a decision issued on January 7, 2011, a panel of the United States Court of Appeals for the Fourth Circuit held and affirmed the district courts ruling in stating that "while the district court did not address all the § 3553(a) factors at sentencing, it

discussed several factors that it deemed most relevant, and explained the variance adequately." In doing so the appellate court surmised the district court considered Sammons history and other characteristics as well as his conduct. The appellate court accepted the district court's opinion that "Sammons" mental state also allowed a need to "provide adequate deterrence to criminal conduct." As also set forth in the order the appellate court found Sammons mental state allowed a variance to "protect the public from further crimes by Sammons." (Appendix at A-4).

The appellate court continued to affirm the district court in imposing a variance and stating the district court did not "abuse its discretion in varying above the sentencing guidelines for the reasons it stated." (Appendix A-4)

The district court, which the appellate court accepted, stated there was evidence before the court to "strongly suggest that Sammons was likely to communicate threats to others in the future." In doing so the appellate court gave "due deference to the court's perception that a longer sentence was needed to protect the public from future crimes by Sammons." (Appendix at A-4).

The panel decision in affirming the district court is in error as there is no evidence Sammons suffered from a mental disease or defect that would bring into question his sanity or competency as a consideration at sentencing. And further is in error as there was no evidence of any criminal conduct or history other than the matters upon which Sammons

admitted his guilt that would indicate Sammons would be a danger in the future.

As a consequence, a review of the Fourth Circuit's decision is compelled because a United States Court of Appeals has entered a judgement affirming a decision by the district court that is without a factual basis.

STATEMENT OF THE CASE

PROCEDURAL STATEMENT OF THE CASE

The Court of Appeals for the Fourth Circuit by a panel reviewed a sentencing order and judgement of a district court in sentencing Sammons which was entered without application of procedures necessary for the findings set forth, and further an order granting an upward variance as requested by the government which was not warranted and therefore, an abuse of discretion.

Prior to the review of the Court of Appeals for the Fourth Circuit this matter was decided in the district court where Sammons was indicted on April 1st, 2008, in the United States District Court for the Western District of Virginia. The offenses were alleged to have occurred in the Western District of Virginia and elsewhere, within the venue of the Court. Sammons was convicted, upon a "plea" of guilty, on each of the five counts of the indictment charging in Count One "...knowingly transmitted in interstate commerce a communication containing a threat to injure the person of another", in violation of Title 18, United States Code, Section 875(c) (hereafter "USC"); in Count Two "...knowingly transmitted in interstate commerce a

communication containing a threat to injure the person of another", in violation of Title 18, United States Code, Section 875 (c); in Count Three "...knowingly transmitted in interstate commerce a communication containing a threat to injure the person of another", in violation of Title 18, United States Code, Section 875(c); in Count Four "...knowingly transmitted in interstate commerce a communication containing a threat to injure the person of another", in violation of Title 18, United States Code, Section 875(c); and in Count Five "...knowingly transmitted in interstate commerce a communication containing a threat to injure the person of another", in violation of Title 18, United States Code, Section 875(c). The District Court had jurisdiction pursuant to 18 USC 3231 and 18 USC 3232. Sammons was sentenced after the submission of a Sentencing Memorandum, with exhibits, by the United States Government (hereafter "Government"); Defendant's Response to United States' Sentencing Memorandum; Presentence Investigative Report with addendum; and Defendant's Exhibits and the Court's application of the United States Sentencing Guidelines. Sammons appeals the District Court's rulings on his oral Motion for a Downward Departure; rulings on the Governments' Motion for an Upward Variance and the Courts' ruling and decision in imposing a sentence outside the advisory guidelines system. An Order of Conviction, which was a final judgment, was entered on the 1st day of October, 2009.

A Notice of Appeal was filed on the 10th day of October, 2009.

The judgement of the United States Court of Appeals for the Fourth Circuit was entered on January 7, 2011. This petition for writ of certiorari is timely filed within 90 days of that date. Sup. Ct. R. 13.3. The District Court had jurisdiction pursuant to 18 U.S.C. 3231 and 18 U.S.C. 3232.

Because the panel decision affirming the district court in without a basis to support the judgment and sentence imposed in the district court Sammons respectfully request his petition for writ of certiorari be granted.

FACTS

Sammons was indicted by the Grand Jury of the United States District Court for the Western District of Virginia, on the 1st day of April, 2008, upon a five count indictment charging him with five counts of "...knowingly transmitted in interstate commerce a communication containing a threat to injure the person of another", each count in violation of Title 18, United States Code, Section 875(c), Count One with an offense date of "On or about December 29, 2007"; Count Two with an offense date of "On or about December 30, 2007"; Count Three with an offense date of "On or about January 9, 2008"; Count Four with an offense date of "On or about January 10, 2008"; and Count Five with an offense date of "On or about January 14, 2009". United States Court of Appeals for the Fourth Circuit Appendix Volume I, Pages 11-14. (Hereinafter referred to as AP Vol. __, Pages ____ for reference only to the appellate court proceedings).

On June 11, 2009, Sammons appeared before the Honorable James P. Jones, Chief United Stats District Judge, for the entry of a plea having previously notified the Court, through counsel, of his intent to change his plea of "Not Guilty" previously entered before the Honorable Pamela Meade Sargent, Magistrate Judge for the Western District of Virginia. The Notice to Change Plea set forth Sammons was entering a plea guilty to five counts charged in the indictment without a written plea agreement. AP Vol. I, Pages 15–17.

On June 11, 2009, Sammons did enter his plea of guilty to the five counts of the indictment filed in this matter and, upon extensive questioning by the Court as to the Defendant's rights and understanding of his plea of guilty, did accept the plea and adjudged the Defendant guilty of the charges. AP Vol. I, Pages 50–51. The Court further directed a pre-sentence report be prepared to assist the Court in sentencing the Defendant, and further, at the request of the Defendant's probation officer and the Government, remanded the Defendant to the custody of the United States Marshall setting the matter for sentencing on the 31st day of August, 2009. AP Vol. I, Pages 58–59.

On or about August 27th, 2009, the United States Probation Officer filed a revised Presentence Report and Addendum to Presentence Investigation Report, said report initially prepared July 28th, 2009, and revised August 27th, 2009. AP Vol. II, Pages 229–245.

On August 27th, 2009, the Government filed a Sentencing Memorandum, with exhibits, with the

Court and counsel for the Defendant. AP Vol. I, Pages 60–196.

On August 28th, 2009, counsel for the Defendant moved to continue the sentencing in this matter to allow sufficient time to respond to the Government's Sentencing Memorandum, which motion was granted and the sentencing hearing was set on the 30th day of September, 2009.

On September 30, 2009, the Defendant filed his Response to the Government's Sentencing Memorandum. AP Vol. I, Pages 197–201.

On September 30, 2009, Sammons appeared before the Court for sentencing, the court having previously found Sammons guilty of the five counts of the indictment and sentenced Sammons to serve the term of 48 months in the Federal Bureau of Prisons. A Judgment in a Criminal Case (the final judgment of the District Court) was entered on October 1, 2009. AP Vol. I, Pages 221–226.

The Notice of Appeal was filed on October 10, 2009. AP Vol. I, Pages 227–228.

The judgement of the United States Court of Appeals for the Fourth Circuit was entered on January 7, 2011. This petition for writ of certiorari is timely filed within 90 days of that date. Sup. Ct. R. 13.3. The District Court had jurisdiction pursuant to 18 U.S.C. 3231 and 18 U.S.C. 3232.

REASONS FOR GRANTING THE WRIT

I. SAMMONS STATES HE HAS SHOWN THE APPELLATE COURT COMMITTED ERROR IN AFFIRMING THE DISTRICT COURT RULING WHERE THE DISTRICT COURT COMMITTED PROCEDURAL ERROR IN FAILING TO CONSIDER THE FACTORS § 3553 (A) FACTORS, AND FAILING TO SPECIFICALLY EXPLAINING THE CHOSEN SENTENCE INCLUDING AN EXPLANATION FOR DEVIATION FROM THE GUIDE LINES RANGE IN THE STATEMENT OF REASON ENTERED BY THE COURT ON THE 1ST DAY OF OCTOBER, 2009, AND THEREFORE SAMMONS WAS NOT SENTENCED PURSUANT TO THE APPLICABLE STATUTORY REQUIREMENT FOR THE COURT TO GRANT AN UPWARD VARIANCE AND THEREFORE, ENTER A SENTENCE ABOVE THE ADVISORY GUIDELINE RANGE SECOND, THE DISTRICT COURT COMMITTED ERROR WHEN IT GRANTED THE GOVERNMENTS MOTION FOR AN UPWARD DEVIATION FROM THE SENTENCING GUIDELINES AND SENTENCED THE DEFENDANT ACCORDINGLY.

PROCEDURAL ERRORS

When called upon the review the sentence of a defendant under an abuse-of-discretion standard " it must first ensure that the district court committed no procedural error, such as failing to calculate (or improperly calculating the guidelines range, treating the guidelines as mandatory, failing to consider the §3553 (a) factors, selecting a sentence based clearly on erroneous facts, or failing to adequately explain the chosen sentence-including an explanation for any deviation from the recommended Guide Lines range. Gall v. United States, 552 U.S. 38, 128 S. Ct. 586, (2007).

In the case currently before this Court, the judge has correctly calculated the guidelines range. Neither the attorney for the United States nor the Defendant by counsel raised any objection to the District Court's calculation of the Guidelines range. It is also clear that the District Court did not treat the guidelines as mandatory simply by sentencing the Defendant to a sentence exceeding the guidelines. The Defendant likewise does not allege that the District Court selected a sentence based clearly on erroneous facts.

The first procedural error in which the Defendant alleges the District Court committed when conducting the sentencing hearing is that the Court did not properly consider certain § 3553(a) factors, the first factor that the District Court failed to consider is (1) the nature and circumstances of the offense and the history and characteristics of the defendant. U.S. Code § 3553 (a)(1). This first factor

could arguably be considered two factors independent of one another and for the purposes of this matter it will be addressed as two separate factors. It does not appear from the transcript of the sentencing hearing that the court gave any weight to either part of this first factor. Appendix A-18 - 21.

The court did not consider the nature and circumstances of the crime in which the defendant was convicted and sentenced on in the matter currently before this Court. Had the Court given this factor any consideration it would have concluded that the nature and circumstances of this crime justified a sentence within or below the range recommended by the sentencing guidelines. The court should have considered the fact that the Defendant had a relationship with at least one victim of the crimes in which he committed and it was only upon the deterioration of that relationship that these threats began to take place. With regard to another group of victims the exhibits submitted by the government establish that the victims at times belittled the Defendant and on at least one occasion threatened the Defendant with bodily harm resulting in the Defendant taking the actions in which he entered a guilty plea. AP Vol. I, 32-34 and AP Vol., I page 73. Furthermore the court gave no consideration to the fact that the Defendant never took any actions towards actually perpetrating the crimes in which he threatened to commit. With regard to the victim "Rice University" there was no evidence to suggest that the Defendant had in fact ever set foot on the campus of that school. For all of these reasons set forth it can be determined that the District Court gave little or no consideration to the nature and circumstances of the offense.

The court also gave little of no consideration to the history and characteristics of the Defendant. In the case currently before this Court the Defendant is an individual who has obtained not only a high school education but a limited level of higher education despite the overwhelming odds against his success. The Defendant was displaced from the home at which he resided until the age of 14 years due to this mother's financial difficulties as well as her being placed in inpatient treatment due to mental health problems, since that time the Defendant has had little or no contact with his mother. AP Vol. II 192. Likewise, the Defendant has never known his father. Despite these difficulties the Defendant graduated from High School with a grade point average of 88.53 and no disciplinary record to speak of. AP Vol. II, Page 191.

The District Court also appears to have given no consideration to the fact that Defendant had no problems during the pendency of this case. The Defendant was incarcerated for a period of time with no problems during the incarceration. The Defendant also was hospitalized for psychiatric issues and evaluations during the pendency of this matter and there is no indication that the Defendant was anything other than cooperative during these periods. The most telling fact as to the Defendants characteristics is that the Defendant was released on Home Electronic Monitoring and an unsecured bond, again there is no indication of any issues during that time period due to the Defendant's behavior. The court has likewise failed to consider that the Defendant has absolutely no criminal record. The trial court should have considered all of these

matters with regard to the history and characteristics of the Defendant but it is clear from the record that the trial court failed to consider any of them.

The court also failed to consider the need for the sentence imposed to afford adequate deterrence to criminal conduct and to protect the public from further crimes of the Defendant. U.S. Code § 3553(a)(2). If the court gave any consideration to this factor it was only minimal. As previously stated, the Defendant was released for a long period of time on an unsecured bond with Home Electronic Monitoring with no apparent problems, no contact towards the victims in this matter and no allegations of further criminal acts. This shows that the court could have provided for adequate deterrence from future criminal conduct and protected the public from further crimes of the Defendant without imposing a sentence either 7 or 8 levels above the sentencing guidelines.

The court also failed to examine the kinds of sentences available. The court did not in any way examine alternative sentences such as probation or Home Electronic Monitoring in this matter. The court has previously "recognized that custodial sentences are qualitatively more severe than probationary sentences of equivalent terms, but offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty." U.S. v. Knight, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed. 2d 497 (2001). Thus by that decision alone probation should have been considered as an available type of sentence when determining what sentence to impose.

The final procedural error that the District Court committed when sentencing this defendant is that the Court failed to adequately state the specific reasons for the imposition of a sentence outside of the guideline range. In U.S. v. Pyles, the Court held that "the District Court must articulate the reasons for the sentence imposed and provide an explanation for the variances that is tied to the §3553(a) sentencing factors." 482 F.3d 282 (4th. Cir. 2007).

In the case presently before this Court it has been previously argued the District Court did not consider a number of the factors set out in §3553(a) thus the Court could not have provided an explanation for this variance that is tied to factors in which it ignored.

The District Court also prepared a written Statement of Reasons, Appendix - 22., which states that the Court imposed a sentence outside the advisory sentencing guidelines and completed Section VI of the Statement of Reasons including the Reason(s) for Sentence Outside the Advisory Guideline System and proceeded to mark a number of boxes giving reasons for departure. However the District Court never lists a single fact justifying a sentence outside the advisory guideline system, in fact the Court leaves that section entirely blank. Likewise when the Court pronounced sentence, Appendix 18 - 21, the Court stated no facts which support a sentence above the sentencing guidelines. The Court lists a number of opinions in which it formed concerning the defendant but failed to state a single factor in the evidence that led to its reaching of those opinions. The court clearly did not

articulate any specific reasons for the departure from the sentencing guidelines and in fact the Court has offered nothing other than a number of vague opinions to support it's imposing of a sentence so greatly in excess of the guidelines range.

II. SAMMONS HAS ESTABLISHED THE APPELLATE COURT COMMITTED ERROR IN AFFIRMING THE DISTRICT COURT JUDGEMENT WHEN THE DISTRICT COURT ERRED IN SENTENCING SAMMONS TO A SENTENCE ABOVE THE ADVISORY GUIDELINE RANGE.

APPROPRIATENESS OF UPWARD VARIATION

The court erred in sentencing the defendant to a sentence above the Advisory Guideline Range. Because the guidelines are now advisory, appellate review of sentencing decisions is limited to determining whether they are "reasonable", and an abuse-of-discretion standard applies to appellate review of sentencing decisions. U.S. v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed. 2d 621 (2005).

The Court has previously held in the matter of U.S. v. Morace, that when determining the reasonableness of a sentence it will no longer look at that sentence in mathematical terms but will instead look at the variance between the sentence range to which the Defendant was actually sentenced and the recommended guideline range. U.S. v. Morace, No. 09-4007 (4th Cir., 2010). In the

case currently before this Court the District Court sentenced the Defendant to a sentence of 48 months in the penitentiary, this represented an upward deviation from the guidelines which recommended a sentence of 18-24 months. When looking at this in accordance with the test set out above this represents an upward deviation by either 7 or 8 levels. To put this into prospective, in order to reach the levels at which the Defendant was sentenced the Defendant would have had to have been scored as having such conduct so as to evidence an intent to carry out said threats which would have added 6 levels to the Defendant and still would not reach the level at which he was sentenced. In this case the Defendant never evidenced such behavior yet was still punished more harshly than a Defendant who did so.

In the case of Gall the degree of which the District Court deviated was just one of the areas the Court may consider when determining the reasonableness of a sentence. The other factors are whether the District Court abused his discretion in determining that the § 3553(a) justified a substantial deviation from the Guidelines range. Gall v. United States, 552 U.S. 38, 128 S.Ct. 586 (2007). In that case the Court affirmed the trial courts decision due to the fact that the judge discussed Gall's criminal history as well as his conduct after withdrawing from the conspiracy in which he was involved as a mitigating factor and determined that the District Court's decision that the factors was a reasoned and reasonable decision.

In the case currently before the bar it has been previously argued above that the District Court

did not give any weight to the factors laid out in U.S. Code § 3553 (a). The court did not consider the fact that the Defendant had no criminal history at the time of the offense or the fact that the Defendant has not had a single issue during the lengthy pendency of this case. Likewise it is not evident whether the District Court gave any consideration to the nature of the offense and the relationship between the Defendant and his accusers. The final factor that the court failed to examine is examining other types of punishment available there is nothing on the record to indicate that the District Court even considered an alternative punishment.

CONCLUSION

In accordance with the foregoing argument Sammons oral Motion for a downward departure should have been granted, the oral Motion of the Government for an upward variance should have been denied and the Court should have specifically explained and set forth the reasons in the Statement of Reasons entered by the Court on the 1st day of October, 2009. Further, the United States Court of Appeals for the Fourth Circuit should have granted relief requested and therefore, the petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,

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No. _____

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APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4936

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ALLEN LEON SAMMONS,

Defendant – Appellant.

Appeal from the United States District Court of the Western District of Virginia, at Abingdon. James P. Jones, Chief District Judge.(1:08-cr-00014-jpj-pms-1)

Submitted: October 29, 2010
Decided: January 7, 2011

Before NIEMEYER, KING, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael L. Dennis, GALUMBECK, DENNIS & KEGLEY, Tazewell, Virginia, for Appellant. Timothy J. Heaphy, United States Attorney, Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allen Leon Sammons pled guilty to five counts of interstate transmission of threats to injure another person, 18 U.S.C. § 845(c) (2006). In sentencing him, the district court varied above the guideline range of 18-24 months and imposed a sentence of forty-eight months. Sammons appeals his sentence, arguing that the district court failed to adequately address the sentencing factors set out in 18 U.S.C. § 3553 (a) (2006), and that the sentence was substantively unreasonable. We affirm.

Sentences are reviewed for reasonableness, applying an abuse of discretion standard. Gall v. United States, 552 U.S. 38, 51

(2007); see also United States v. Seay, 553 F.3d 732, 742 (4th Cir.), cert. denied, 130 S. Ct. 172 (2009). The reviewing court first examines the sentence for "significant procedural error," including "failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553 (a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence – including an explanation for any deviation from the Guidelines range." Gall, 552 U.S. at 51.

With respect to the explanation of the sentence, this court has stated, "Regardless of whether the district court imposes an above, below, or within-Guidelines sentence, it must place on record an individualized assessment based on the particular facts of the case before it." United States v. Carter, 564 F.3d 325, 330 (4th Cir. 2009) (internal quotation marks omitted). If this court concludes that a sentence is procedurally reasonable, the court then "consider[s] the substantive reasonableness of the sentence imposed." United States v. Lynn, 592 F.3d 572 575 (4th Cir. 2010) (citing Gall, 552 U.S. at 51). Because Sammons drew on some § 3553 (a) factors to argue "for a sentence different from the one ultimately imposed," he preserved the claim he raises here for appeal. Lynn, 592 F.3d at 578.

Sammons first argues that the district court failed to consider the nature and circumstances of the offense, as well as his history and characteristics, and the need for his sentence to afford adequate deterrence to future criminal conduct and to protect the public. He further argues that the court failed to consider other kinds of

sentences, such as probation or home electronic monitoring. Last, Sammons maintains that the court failed to explain adequately the reasons for the variance.

We are not persuaded by Sammons' claims. While the district court did not address all the § 3553 (a) factors at sentencing, it discussed several factors that it deemed most relevant, and explained the variance adequately. The court focused on Sammons' history and characteristics, see § 3553 (a) (1), as shown in the materials submitted to the court, and "his conduct [in] earlier proceedings in this case." The court stated that Sammons' mental state prevented him from appreciating the seriousness of his conduct, made it difficult for him to control his conduct at times, and suggested that he might be dangerous to others. The court concluded that the need to provide adequate deterrence to criminal conduct, § 3553 (a) (2) (B), and the need to protect the public from further crimes by Sammons, § 3553 (a) (2) (C), necessitated a variance.

Finally, the court did not abuse its discretion in varying above the guideline range for the reasons it stated. The evidence before the court suggested strongly that Sammons was likely to communicate threats to others in the future. Giving due deference to the court's perception that a longer sentence was needed to protect the public from future crimes by Sammons, see Gall, 552 U.S. at 51, we conclude that the court did not abuse its discretion in varying upward to a sentence of forty-eight months and that the sentence was not substantively unreasonable.

Accordingly, we affirm the sentence imposed by the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

FILED: January 7, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4936
(1:08-cr-00014-jpj-pms-1)

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ALLEN LEON SAMMONS,

Defendant – Appellant.

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

JUDGEMENT IN A CRIMINAL CASE

Case Number: DVAW 108CR000014-001

USM Number: 13308-084

UNITED STATES OF AMERICA

v.

ALLEN LEON SAMMONS

Michael L. Dennis, Esq
Defendant's Attorney

THE DEFENDANT:

X Plead guilty to count(s) One (1), Two (2), Three (3), Four (4), & Five (5)

__ Plead nolo contendere to count(s)
_____
Which plea was accepted by the court.

__ Was found guilty on count(s)
_____
After a plea of not guilty,

The Defendant is adjudicated guilty of these offenses:

Title & Section
18 USC 875 (c)

Nature of Offense
Interstate Transportation of Threatening Communication

Offense Ended
1/14/08

Count
1 through 5

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 30, 2009
Date of Imposition of Judgment

Signature of James P. Jones

James P. Jones, Chief United States District Judge
Name and Title of Judge

10/1/09
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Forty-eight (48) months, consisting of the same term on each count to run concurrently.

X The court makes the following recommendations to the Bureau of Prisons: That the Defendant receive appropriate mental health treatment.

X The defendant is remanded to the custody of the United States Marshal.

__ The defendant shall surrender to the United States Marshal for this district:

__ at _____ __ a.m. __ p.m. on _____.

__ as notified by the United States Marshal.

__ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Three (3) years.

The defendant must report to the probation office in the district which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least

two periodic drug tests thereafter, as determined by the court.

__ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (*Check if applicable.*)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (*Check if applicable.*)

X The defendant shall cooperate in the collection of DNA as directed by the probation office. (*Check if applicable.*)

__ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. δ 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (*Check if applicable.*)

__ The defendant shall participate in an approved program for domestic violence. (*Check if applicable.*)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as

well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any

controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and,

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to

confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, the defendant:

(1) Must reside in a residence free of firearms, ammunition devices, and dangerous weapons;

(2) Must submit to warrantless search and seizure of person and property by the probation officer or other law enforcement officer, whenever such officer has reasonable suspicion that the defendant is engaged in criminal activity;

(3) Must participate in a program of testing and treatment for substance abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer;

(4) Must participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer;

(5) Must pay any monetary penalty that is imposed by this judgment in the manner directed by the court;

(6) Must not have contact, direct or indirect, with the following individuals while on supervised release: Adie Victor, Derrick Taylor, Christopher Weisinger, Gregory Hylinski Gretchen Smith; and

(7) Must not access Internet social networking sites or chat rooms including, but not limited to, Facebook, MySpace, LiveJournal, Twitter, and any other chat rooms or similar sites.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$500.00	$	$

__ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

__ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column

below. However, Pursuant to 18 U.S.C δ 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$0.00		$0.00

__ Restitution amount ordered pursuant to plea agreement $ _____

__ The defendant must pay interest on restitution and a fine of more than $2,500.00, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. δ 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. δ 3612(g).

__ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

__ the interest requirement is waived for the __ fine __ restitution.
__ the interest requirement for the __ fine __ restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on after September 13, 1994, but before April 13, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, the total criminal monetary penalties are due immediately and payable as follows:

A. X Lump sum payment of $500.00 immediately, balance payable

__ not later than _____, or

__ in accordance __C, __D, __E, __F or, __G below); or

REMAINDER OF PAGE 6 of 6 JUDGMENT ORDER CONTAINS OPTIONS AS TO PAYMENTS AND NONE ARE CHECKED AND THEREFORE BLANK AND NOT APPLICABLE TO DEFENDANT

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

END OF JUDGMENT ORDER

THE COURT: Well, I do consider this to be a serious case, as both attorneys have agreed. And of course, I have carefully reviewed the pre-sentence report, as well as the memoranda submitted by counsel, and I am familiar with the defendant and his conduct from earlier proceedings in the case.

I do believe, as urged by the Government, that the defendant has engaged in extensive and egregious conduct beyond the offenses of conviction as described in the Government's sentencing memorandum. And this conduct supports a sentence above the advisory sentencing guideline range.

The defendant has clearly failed, in my opinion, to adequately recognize the seriousness of his conduct, and appears to believe that threats of violence are appropriate responses to conflicts with other people.

While the defendant has been diagnosed with mental impairment, borderline personality disorder, in my opinion that creates greater difficulty for him and for society because he, again, is unable to recognize and control, in some circumstances, his conduct. The defendant is clearly very self absorbed, everything in the world is how it affects him, what goes on in the world is only reality as to its effect on him. And this outlook, and his extensive and egregious conduct, does support an argument that the defendant my be dangerous to others.

And I find that his conduct is, for that reason, not adequately reflected in the advisory sentencing guidelines, and demands a greater term of confinement in order to protect the public and provide adequate deterrence.

Accordingly, pursuant to the Sentencing Reform Act, and having considered the factors set forth in 18 United States Code Section 3553 (a), and after having consulted the advisory sentencing guidelines, it is the judgment of the court that the defendant, Allen Leon Sammons, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a total term of 48 months, consisting of 48 months on each count to be served concurrently.

The court will recommend to the Bureau of Prisons that the defendant receive appropriate mental health treatment while incarcerated.

Upon release from imprisonment the defendant shall be placed on supervised release for a term of three years, consisting of three years on each count to run concurrently.

He must report to the probation office in the district to which he is released within 72 hours of release from custody.

He must comply with the following mandatory conditions of supervision. He must not commit another federal, state or local crime; he must not unlawfully possess a controlled substance and must refrain from any unlawful use of a controlled substance; he must submit to one drug test, and at lease two periodic drug tests thereafter as determined by the court.

He must not possess a firearm, ammunition, destructive device or other dangerous weapon. He must cooperate in the collection of DNA as directed by the probation officer.

He must comply with the standard conditions of supervision that have been adopted by the court, as well as the following special conditions. He must

pay any monetary penalty imposed by this judgment; he must participate in a program of testing and treatment for substance abuse, as well as a program of me .tal health treatment as directed by the probation officer, until released from the program by the officer.

He must reside in a residence free of firearms, ammunition, destructive devices and dangerous weapons. He must submit to warrantless search and seizure of a person and property by the probation officer, or other law enforcement officer, when such officer has reasonable belief that the defendant is engaged in criminal activity.

He must pay the United States a special assessment of $500, which is due and payable immediately.

The court finds that he does not have the ability to pay a fine, and will waive a fine in this case.

As a special condition of his supervision he must have no contact with the following individuals: Adie Victor, Derrick Taylor, Christopher Weisinger, Gregory Hylinski and Gretchen Smith. And this is contact in person or in any other manner, direct or indirect, in writing, by the internet or in any other fashion.

In addition, while on supervision he must not have access to any internet social networking sites or chat rooms including, but not limited to, Facebook, MySpace, LiveJournal, Twitter or other similar sites.

I hereby advise the defendant of his right to appeal this sentence. A notice of appeal must be filed within ten days of entry of judgment, or within ten days of a notice of appeal by the Government. If requested, the Clerk's Office will prepare and file a

notice of appeal on behalf of the defendant. And I also advise the defendant of the right of a person who is unable to pay the costs, to apply for leave to appeal without pre-payment of such costs.

And Mr. Dennis, I'll direct you to consult with your client in regard to his right to appeal.

MR. DENNIS: Yes, Your Honor.

THE COURT: Are there any further matters the court must resolve?

THE DEFENDANT: I have one question, if I may?

THE COURT: No, sir. You'll have to speak to your attorney.

THE DEFENDANT: Why is there a lack of equality or discrimination under law? Am I not a member of the community? Am I not a victim of the very crime I am accused by the very people this gentleman here represents? This is an ethical misconduct and a terrible miscarriage of justice.

SEALED DOCUMENT

Statement of Reasons, United States District Court for the Western District of Virginia, U.S. v. Sammons (October 1, 2009)

Reproduced in a separate filing